App F IX-4

19 52-53
(Cm)

File No 76-52
Serial Nos. 3, 4

Previous References
C M Dep No 1/52
ME 115-42-25, 26

Later References
C M Dep 181/53
ME 115-54-22, 25, 33 34

GENERAL AND REVENUE SECRETARIAT

Serial Nos 2

Part B for Jan 53

SUBJECT

Exemption from payment of octroi Duty on iron sheets, flats, rounds, implements etc, Received in the Deptt

L 16939/9 5-1-53

The Comy Corpn Bijnor
(Mayor)

Forwards the copy of the petition

Copy to the Commy for food production
Mpp Bijnor

Ch 1/2

Ch 1/2/(1)

Fc A 5130/2

Office of the Commissioner ~~for Food~~ Production in Mysore, Bangalore, dated 26th November 1951.

To

The Secretary to Government of Mysore,
Food and Agriculture Departments,
Bangalore

Sir,

Exemption from thepayment of Octroi Duty on Iron sheets, flats, rounds, implements etc , received by the Departments

I write to state that in accordance with G O No L 475-88 M L 115-42-26 dated 10th July 1943, iron sheets, flats, rounds, implements etc , imported by the Agricultural Depots or Cooperative Societies within the limits of the Municipalities in the State are exempted from payment of Octroi duty But the Octroi Superintendent City Area, has been insisting now on the payment of Octroi Duty on iron materials received by the Department, on the ground that no such concession is contemplated in the Corporation Act. The Commissioner, Corporation of Bangalore who was addressed to intimate if the above G O is not applicable now has informed that in the Corporation Act of 1949 there is no provision for such an exemption and as such all dutiable goods of the Government are liable for payment of Octroi He is also of the opinion that unless a new provision is made in the Corporation Act to enable the Corporation to give exemption in respect of Government goods etc., Octroi has to be collected In these circumstances, I request that sanction of Government may kindly be communicated to exempt the department from the payment of Octroi duty as in the past in the interest of the Agriculturists

Yours faithfully,

COMMISSIONER FOR FOOD PRODUCTION

Exemption from the payment of octroi on Drawsheets, plates etc received by the [illegible]

3850/Con 6923

4) The G.O in question Mysore Municipalities to the Mysore city municipalities act, The Town municipalities act & the minor municipalities act & the corporation act has come into being subsequently it is not applicable to the city of Bangalore corporation act. The favour of opinion as to how the exemption can be made applicable to the city of Bangalore corporation also

9691 DEPARTMENT 13 DEC 1951 MYSORE

Law Secy) 12/12

5) If advised the said sum will be required immediately from the following

1) the finance under Sales tax is demanded

2) the JC writing to the corporation

corresponding with the corporation

Asst Secy (A&T) 16/12

7) Orders The JC will be requested to furnish the above information, if approved

18/12/51 20/12

8) Asst Secretary 4152 57(7) 4/12

4914/Lewo

Exemption from the payment of octroi duty on iron sheets, flats, rounds, implements etc received by the F P Dept

923/9007
A-F

Issued letter No A F 9051 D 11-1-52 To the F P C Requests to furnish the particulars

Sus A Sons 15/1/52

From the Comm for Food Production
Letter No FD 2523/51-52 dt 18-2-52
Furnishes the particulars called for and also the file relating to the Correspondence with the Corporation of the City of Bangalore

10) Enclosed for perusal orders. It is stated that after Municipality has been raised to the status of a Corporation, there is no provision in the Corporation Act to exempt the Dept from payment of octroi duty by the Corporation. The file relating to this Correspondence is also enclosed

11) Papers may be sent to Law Sec with reference to para 5

Sons 22-2-52 Br/v

12) Vr [illegible] Law Branch)

Sd/v

13) The question of exemption of articles imported by Govt from octroi has been thoroughly discussed recently in a file from the municipal branch. The advocate may kindly consider and advise us in the light the discussion in the file with them

MAs) NMA Con

[illegible] Sd/v

Sd/v

14) Enclosed Papers may now be referred to the Municipal Branch for putting up the papers referred at para 3

& REVENUE SECRETA

Sons 13-3-52 Br/3

ML-Br 26/3

7922/Ind VIII 28 6923/9007/1078

Exemption from payment of octroi Duty of Steel, Plates, Rounds, Angles, etc, Received by this Dept for Govt production

---

1923/9007/1078 A&F

15) The file referred to in this previous para 13 — D on 5552/Ind — has been requisitioned by the Secretary to day. The Reference & this file will be attended

1136/Law

Law 17/3/43

17/3

9/3

16) ~~Dep papers~~ Ex 1/52-53 contain the instructions to the Corpn to exempt the Govt goods from the levy of octroi & pending the file may be returned to A/F Branch

5/6

Under Sec A&F)

7/6

5/6

9/6

V

Ro 10/6

17) The papers relating to the instructions issued by Govt to the Corporation to exempt the Govt goods from the levy of octroi, are placed below. Papers may now be sent to the Law Secty with reference to para 13

Dow 1076/52 10/6

11/6

Under Secy Law)

118) Kind reference is invited to Govt's proposal in the Finance Bill of 1952 to levy a duty on tobacco manufactured in the country. The matter is to be moved to depart from. The views thereon JL and such may perhaps consider this case in the light of the decision taken thereon.

U/S (A&F) 28/6

V

28/6

GENERAL & R V NJ O T TA N I 28 JUN 1952 A & F

Exemption from payment of octroi duty on
Iron sheets, flats, rounds, implements etc

19) Enclrs 1078 807
In connection with Taxes to be paid on Electrical
equipment of the El. Dept, it has been
decided that properties belonging to Govt are
not liable to any tax by the Corporation
"y" and much less in any view of the matter
(vide letter dated 8-4-52 addressed to
the Comm Corporation the City of Bangalore)

J. 20) The opinion furnished by the Law Secy
in connection with a similar case, is
flagged "Z"

21) The proposal of the Comm for Z-P as noted
at "A" in para 1 — is for orders.

H/Rms
17 5 52 H/3/7

22) Electrical goods imported by Govt
differ on a different footing with those of Iron-
-Sheets, flats, rounds etc imported by the Food
Production Department Electrical goods will
be used by the Department finally & no part
of it will be issued to the public But in the
case of iron sheets etc, they will be issued
to the consuming public ~~and~~ to MPCS
~~and~~ simultaneously & it is more important whether
the object is considered by the Govt itself,
although iron sheets etc when issued belong to
Govt The opinion of the Law Secy may
be obtained before a decision is taken

Secy (A & S q) 1917

23) The criterion of judging whether goods
are exempted from levy of Octroi duty is whether
they are Govt property at the time of import the
criterion is not as to when they are supplied

Exemption from payment of Octroi duty on Iron sheets, plates, rounds, implements etc received by the Govt

1976 (W) 1078
New AF

24) If this view is correct then all the goods mentioned in the FPO are exempt. For favour of opinion if this view is correct

(Sd/- Lawley)
23 JUL 1952

22/7/52

23/7

25) The question of exemption from payment of octroi has been elaborately discussed in the Municipal branch file no 5552/M and it embodies the Advocate-General's opinion. It is not known what final decision has been taken thereunder. Subject to approval the Administrative branch (A & F Rs) will be requested to get the file from the Municipal Br and consider the question in the light of the opinion

This is a statement of facts as below

the branch of Secretariat

24/7/52

Under Secy A-F

6) A further reference must be made, if necessary

24/7

25/7

27) Under the orders of the papers may be referred to the Advocate General unofficially for remarks and opinion in light of the remarks in paras 22 to 24 of the notes, as sought in para 26

Rs 25/7 25/7 26/7

28) A may be done to Ally, since the case involves a point of Security of State 26/7

Exemption of payment of octroi duty on iron sheets, plates, rounds, implements etc

~~1078~~ A07 ✓6923 ✓9007 ✓1078 ✓5904 5-2-54/rl

29) The Collection (linked) containing Fl-A note no 138/57-52 of the Advocate General on the subject referred to in the note flagged "J" may kindly be put up for reference and return early

Sd/- N.L.B.
28-7-52

GENERAL & REVENUE SECRETARIAT
31 JUL 1952
LEGAL BRANCH

30) The above file was put up for reference vide D. No. 2003/rl A.C. up to passment of profession tax by Rail Road Transport Dept, orders were obtained to avoid its reference on file hereby D. No. 5204/rl for which also this same collection was ordered to be put up

31) The above file was made available yesterday by the General Case worker But it is found that the required file containing the Advocate General's opinion was since been destroyed and put up vide D. No. 3902/rl (Levy of Stamp fee on Road Transport Buses).

32) Hence one object of the Advocate General's opinion referred to at para 29 of put up, and flagged "D"

33) The file may now be returned to the Asst S., Branch.

Under Secy
Asst Secy

Sd/- N.L.B.
Sd/- 31/10

37) Submitted for perusal & orders. The opinion of the Administrative Secretary

1708/5904 Exemption from payment of customs duty on certain materials received in connection with the subject matter of notes in paras 22 to 24

1976/Hans On consultation with the L.S.G. seek a Law Scott, orders are solicited

Hans 27.10.52

Law 29/10/52

38) The draft regulations annexed to the Law Society's letter of 14th October are approved

Law 13/11

39) Ed. V. Scott 20/11

(Law Secretary to Treasury)

Law 4/11

40) The Crown, as the sovereign body, is exempt from liability to pay tax; unless it is expressly made liable under a statute or its privilege for exemption is taken away either expressly or by implication by the provisions of the statute

41) The State is not expressly made liable to pay duties, by the Customs Act, in respect of the goods imported unless the duties imposed and the privilege for exemption is not also taken away either expressly or by implication ~~Some goods belonging to the State are exempt~~ Sec 130 of the Customs

EDINBURGH 1976 13 NOV 1952 TC

Law 24 NOV 1952

1976/Law (1c)

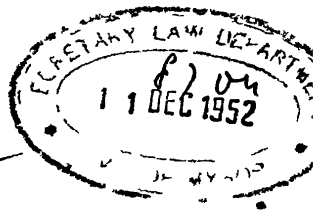
Levy of Octroi on goods imported ~~to City~~
Limits by F P Dept

Act merely says 'If the Corporation by a Resolution determines that an Octroi should be levied on animals or goods brought within the Octroi limits of the City, such Octroi shall be levied on such articles or goods specified in Part V of Schedule III at such rates etc'

42) So Govt Undertaking or the State are exempt from payment of Octroi

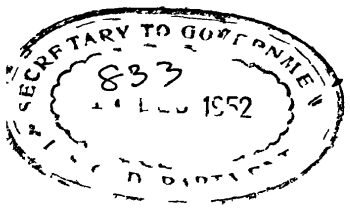
(Law Secy)

10/12



43) The decision conveyed in Govt letter L 5873 dated 8-4-52 governs this case -

44) The property of the State which is now the Sovereign cannot be liable to taxes by a Corporate body created by the State, unless the Statute expressly ~~expressly~~ imposes such liability -



Secy (Leg)

16/12

16/12

45) The Commissioner of the Corporation may be informed of the above and Cfy also sent to Commissioner of Food Production

20/12 23/12

5204/ml

Levy of Octroi on goods imported by the Govt Dept

46) Draft Collr to the Commr Corpn and also Copy to the Food production Commr to put up for approval

Issue
27/1

RA
26/1/53

SA
26/1

Sd/- Lyhe Commr Corpn Bldg
(the President)

Sd/- L 16939/etc)6-52-4 dated 5-1-53
22/1/53 to [illegible]

G R S App F G 3

GENERAL AND REVENUE SECRETARIAT

(*Continuation sheet draft from*)

Ref. 9051

To Dt 11/1/52

The Commr for T.P

Sir,

Subj: Exemption from the payment of Octroi duty on Iron Sheets, flat rounds, implements etc received by the T.P Dept

With reference to your letter No T CA 5130/2 dt 26.11.51 on the subject noted above, I am directed to request that the Board may be furnished urgently —

(1) the provision under which exemption is claimed

(2) the file relating to the correspondence with the Corporation of the City of Bangalore

Yours faithfully,
for Secy to Govt
Dy T, Transport & Ports Depts

Sd/- illegible (G.A.R.)

10/1

WD 06172—GPB—2 000—21 1 50

C F No 45]

GOVERNMENT OF MYSORE

9007

OFFICE OF

the Commissioner for Food Production,

Bangalore

No T.D. 252 S/51-52

Encls 5

Date 18th February 52

To

19 FEB 1952

The Secretary to Government,

Departments of Food & Agriculture,
Bangalore

Sir, 9051/19/V

Re Exemption of payment of Octroi duty on iron sheets, flats, rounds, implements etc, received by the Department

With reference to your No 9051 dated 11 1 52, I write to state that the above mentioned materials were being exempted from payment of Octroi duty by the Bangalore City Municipality as per Government order No L 475-38/ML 115-42-26 dated 10 7 43 Iron sheets, flats, rounds etc, are being used for the manufacture of agricultural implements which are sold to the agriculturists The materials are being stocked by the Department and sold for the benefit of the agriculturists either directly or through Co-operative Societies and not for profit After the City Municipality, has been raised to the status of a Corporation, there is no provision in the Corporation Act to exempt this Department from payment of Octroi duty by the Corporation Secondly the bulk of the materials are being received in this place in the first instance to facilitate proper distribution throughout the State and also for getting the implements manufactured as per specification fixed by the Department Under the above mentioned reasons the exemption from payment of Octroi duty is claimed

The file relating to the correspondence with the Corporation of the City of Bangalore is herewith enclosed for ready reference and return when done with

Early orders may kindly be obtained and communicated

Yours faithfully,

(M T Appajappa)
Commissioner for Food Production

I-D 7 1810 9/11

CORPORATION OF THE CITY OF BANGALORE

No A3/Gl 6919/51-52

CORPORATION OFFICES,
BANGALORE

Dated 30th October *1951*

FROM

THE COMMISSIONER,
CORPORATION OF BANGALORE,
BANGALORE

To

The Commissioner, for Food Production in Mysore,
BANGALORE

SIR,

SUBJECT - OCTROI DUTY ON IRON SHEETS, M S FLATS RECEIVED BY YOUR DEPARTMENT

REFERENCE - Your letter No CID / I D 1267 dated the 23rd October 1951

With reference to your letter quoted above, I write to inform you that under the Old Municipalities Act the Government Goods were exempted from payment of Octroi But in the Corporation Act of 1949, there is no provision for such an exemption and as such, all duitable goods of the Government are liable for payment of Octroi In the circumstances unless a new provision is made in the Corporation Act to enable the Corporation to give exemption in respect of Government Goods etc , Octroi has to be collected

Yours faithfully,

VVR 30/10/-.

FOR COMMISSIONER

Office of the Commissioner for Food
Production in Mysore, B'lore,
dated 19th Oct 1951.

To

The Commissioner,
Bangalore Corporation,
Bangalor

Subject - Octroi on Iron sheets, M S Flats, etc ,- received by the department

---

I wish to state that the Octroi Superintendent, City area, has intimated in his No T 3PR 147/51-52 dated 12 9 51 enclosing an extract of your memo No A3 PR No 52 of 51-52 dated 4 7 51, that octroi duty on the iron materials received by the department has to be paid Government have in their No L 475-88-ML 115-42-20 dated 10th July 1943 exempted the agricultural implements stocked in the Agricultural Depots or cooperative Societies within the limits of the Municipalities in the State from payment of Octroi duty It may kindly be made clear if the above order is not applicable now and if so the date from which octroi duty is payable on the agricultural implements received by this department in connection with "Grow More Food Scheme" may kindly be intimated so as to enable this Department to address Government in the matter of continuance of exemption from payment of octroi duty on agricultural implements

An extract of the Corporation Act imposing the levy may kindly be forwarded for reference

An early reply is requested

I.D 126/ KN 23/10

Yours faithfully,

O/C

COMMISSIONER FOR FOOD PRODUCTION

19/10/51

MC

QB 804/51-52
10/9

Office of the Commissioner for Food Production in Mysore, Bangalore,
dated 10th September 1951.
...

To

The Octroi Superintendent,
City Area, Bangalore.

Sir,

I write to inform you that iron sheets, flats etc., received from Bhadravathi and Tatanagar are required to be cleared by the Government Central Implement Depot, Bangalore without payment of wharfage and demurrage charges. As no intimation for the payment of ~~xxx~~ octroi on Government goods is received in this office, I request you to kindly permit the passage of these iron goods as heretofore without the levy of octroi duty. A circular copy if any, notifying the levy of octroi duty on the class and scale payable etc , may be sent for reference and action to this office.

Yours faithfully,

MC.

For Commissioner for Food Production

Corrected copy

CORPORATION OF THE CITY OF BANGALORE

OFFICE OF THE OCTROI SUPERINTENDENT
CORPORATION OF THE CITY OF BANGALORE

No. T3 PR 147/51-52 Enclose — Bangalore dated 12th Sept'r 1951

FROM

THE OCTROI SUPERINTENDENT
BANGALORE CORPORATION
BANGALORE

To

The Commissioner for Food Production
in Mysore,
BANGALORE.

Sir,

With reference to your letter No ID No 804 of 51-52 dated 10-9-1951 regarding the levy of octroi on Iron Sheets Plats etc , received from Bhadravathi, I write to state that duty on iron materials and other dutiable articles have to be paid as per Commissioner's Memo No A3 P.R No 52 of 1951-52 dated 14-7-1951 The copy order of the Commissioner is herein enclosed for information

Yours faithfully,
Octroi Superintendent

kr

OFFICE OF THE COMMISSIONER FOR FOOD PRODUCTION IN MYSORE
No 9900
Date 19/9
BANGALORE

CORPORATION OF THE CITY OF BANGALORE

No. Office of the Octroi Superintendent, Bangalore, Dated . .

Extract of Commissioner's Memo No.A3.P.R.52/51-52 dated 14-7-51 with regard to exemption from payment of Octroi duty to Bonafide Government Property.

x x x x x x x x x

"The Government goods which were enjoying exemption under the old Municipalities Act are not entitled to any exemption under the present Corporation Act in regard to payment of octroi on goods belonging to them".

Copy of the above is forwarded to. The Commissariat for Food Production in Mysore for information. Arrangements may kindly be made to make payment of duty @ 1-9-0, 1-0-0, 2-0-0% advalorem as per this office Transit Pass No. .... dated. ... .towards the value of x . ... imported by you after producing the resspective invoices.

Octroi Superintendent
OCTROI SUPERINTENDENT(CITY AREA).

8318

Sl. No. 26]

GOVERNMENT OF MYSORE

General and Revenue Secretariat

Requisition for papers

Section C.M

A

B

Filed (1 - 3)

Deposit No

File No M.G.S.-52

Serial No 2

To be put up with Diary No 9222 of 1952-53

Signature M. Srinivasaiah

Branch Municipal

Section C M

Date 13 3 53

WD 015471—GPB—2 000 pads of 100 sbts each—18-1 52

-86/ 6923/9007 Agreement No. By 1 3 52

I D 361/52-53

27 MAY 1952 1428

Office of the Comm... Food
Production in Mysore, ...ore,
dated 30th April 1952

1078/A7

To

The Secretary,
Department of Food and Agriculture,
Bangalore

10 MAY 1952

Res- Exemption ~~of~~ for payment of Octroi duty on Iron sheets, flats, rounds, Implements etc , received by the Department

---

In continuation of this office No I D 2523/51-52 dated 18 2 52, I request that orders of Government regarding the above may kindly be obtained and communicated at an early date

The file sent with the above mentioned reference may kindly be caused to be returned when done with

Yours faithfully,

(M I APPAJAPPA)
COMMISSIONER FOR FOOD PRODUCTION

mC

Subject

1) The Connected file has been referred to the Asst Secy (E) Branch on 6 3 52 with this branch D/O No 9007 The return of the file will be awaited or this will be sent in Continuation to the Asst. Secy (E) Branch for necessary action

Sd/-
23/5/52

for Kindly noting the present stage of the subject

Supdt, MC Bor 24/-

GENERAL & REVENUE SECRETARIAT 5204 MUNICIPAL BRANCH

B 9007 28/9

No 46] GOVERNMENT OF MYSORE 104 AFF

No
Encls To DD 2782/52-53 6/10/52

OFFICE OF the Commissioner for Food Production, Bangalore.

Date 4th October 52

8 OCT 1952

To

The Secretary to Government,

Education Department, Bangalore.

EDUCATION SECRETARIAT GOVERNMENT OF MYSORE AFF 7 OCT 1952

Sir, EH 76-52-3

Re: Exemption from payment of Octroi Duty on iron sheets, flats, rounds, implements etc, received in the Department.

-

In inviting your kind reference to the marginally noted communications of this office on the subject noted above I write to state that no reply is received in this office so far I therefore request that orders of Government may be kindly obtained in the matter and communicated at an early date.

I D 2523/51-52	18-2-52
I D 361/52-53	30-4-52

Yours faithfully,

(M K Appajappa)
Commissioner for Food
Production.

j.

4/10 4/10

Subject

1) The connected file (D/S No 1078) has been referred to the Municipal Branch on 28/7/52 for furnishing certain papers & that Branch despite repeated reminders thereon has not been received. This may also be sent to the Branch for furnishing the connected papers with necessary information without delay for obtaining orders

Sir in continuation of the above

8/10-52

7/10/52

12/10

10/

Am L.

16939 / CM76-52-4

4 Copies

To 5/1/53

The Commissioner
Corpn of the city of B'lore
(Through the Mayor)

Subject Exemption from payment of octroi Duty on iron Sheets Hal-Rounds, implements etc Received by Hood production Dept

Sir

I am directed to forward herewith a copy of Letter no Dte A-5130/2 dated 26 11 52 addressed by the Commr for Hood production to the Secy to Govt, Hood & Agrl Depts on the above subject and to state that the decision conveyed to you in this Dte Letter no L 583 dated 5 4 53 a copy of which is enclosed for Ready Reference governs this case also.

The property of the State which is now the Sovereign cannot be liable to taxes + by a Corporate Body created by the State, unless the State expressly empowers such Liability

Yours faithfully
27/1
for Secy

Please type Copy
27/1

Recd on 5/1/53

Memo on L 16960 Dt 5/1/53

Copy of the Comm for Hood production in Mysore Blore for information & necessary action

B. 27/1
for Secy

Copy to A & E Branch 26/1 Dt 21/12/52

26/1/53

GOVERNMENT OF MYSORE,

General and Revenue Secretariat,

No L
xxx L. 16939/CM 76-52-4 Dated, Bangalore, 5 ~~December 1952~~ 5 Jan 53

From

The Secretary to Government,
L S G Department

To

The Commissioner,
Corporation of the City of Bangalore,
(through the Mayor)

Subject - Exemption from payment of Octroi Duty on Iron Sheets, Flats, Rounds, Implements etc., received by Food Production Department.

I am directed to forward herewith a copy of letter No F C A. 5130/2 dated 20th November 1951 addressed by the Commissioner for Food Production to the Secretary to Government, Food & Agriculture Departments on the above subject and to state that the decision conveyed to you in this office letter No.L.583 dated 8-4-1952, a copy of which is enclosed for ready reference, governs this case also.

The property of the State which is now the Soverign cannot be liable to taxes by a Corporate Body created by the State, unless the Statute expressly imposes such liability.

Yours faithfully,

(Sd)
(V. Hanumanthappa)
for Secretary to Government,
Food & C Department.

Memo No L. 16940 Dt 5/1/53

Copy of the above is forwarded to the Commissioner for Food-Production in Mysore, Bangalore, for information

(V Hanumanthappa) 3/1
for Secretary to Government,
Food & L S G. Department

LNS.3.31/12.

GOVERNMENT OF MYSORE,

General and Revenue Secretariat,

No L

xxx L. 16939/CM 76-52-4 Dated, Bangalore, 5 December 1952

From

The Secretary to Government,
L S G Department

To

The Commissioner,
Corporation of the City of Bangalore,
(through the Mayor)

Subject - Exemption from payment of Octroi Duty on Iron Sheets, Plates, Rounds, Implements etc., received by Food Production Department.

I am directed to forward herewith a copy of letter No F C.A. 5130/2 dated 20th November 1951 addressed by the Commissioner for Food Production to the Secretary to Government, Food Agriculture Department on the above subject and to state that the decision conveyed to you in this office letter No.L.583 dated 8-4-1952, a copy of which is enclosed for ready reference, governs this case also.

The property of the State which is now the Sovereign cannot be liable to taxes by a Corporate Body created by the State, unless the Statute expressly imposes such liability

Yours faithfully,

(Sd)

(V Hanumanthappa)
for Secretary to Government,
L S G Department.

Memo No L. 16940 Dt 5/12/53

Copy of the above is forwarded to the Commissioner for Food-Production in Mysore, Bangalore, for information

(V Hanumanthappa) 31/12
for Secretary to Government,
L S G. Department

LNS.3.31/12.

Letter No L 583 dated 8th April 1952 from the Secretary to Government, L S G Department, Bangalore, th the Commissioner, Corporation of the City of Bangalore, (through the Mayor)

"With reference to the correspondence ending with your letter No Gl 1221 dated 16-1-52 or the above subject, I am directed to state that the Central Water and Power Commission have also desired in a further communication since received that plant and other materials required for generation, transmission and distribution of electricity be exempted from the levy of octroi duty to keep down the cost under the rural electrification scremes.

The properties of the State cannot be taxed under a local enact when the State is not expressly named in the Statute to be bound to p such taxes.

In the taxation proposals of the Corporation published in your No.D.114-A/50 dated 26th September 1950 under Section 98(2) of the Corporation Act, the properties of Government at the time of import and accompanied by an invoice certified by the Departmental head concerned that the property contained therein belongs to Government are declared to be exempt from octroi duty.

Though the Corporation Act makes no provision for the grant of exemptions from octroi or other taxes except property tax, the author empowered to levy a tax (the Corporation in this case) is entitled to declare and provide that the tax is not leviable on certain goods provided that the byelaw relating to that matter is not discriminatory and has for it the foundation of a reasonable classification. The basis of such a just and reasonable classification cannot be disputed in the exclusion of Government properties from octroi in the taxation proposals of the Corporation.

I am, therefore, to state that properties belonging to Governme are not liable to any tax by the Corporation and much less to octroi in any view of the matter."

Copy

(V. Hanumanthappa)
for Secretary to Government
L.S G. Department.

LNS.6.31/12.

Extracts of the opinion of the ~~Accountant~~ Advocate General, on file bearing Diary No.355/M1, on subject: Unauthorised construction by the P.W.Dept. Tarikere ----

"The question is whether Section 112 of the Town Municipalities Act, which requires a person proposing to construct any building, to take the permission of the Municipal Council in that regard in manner provided by that section, is a provision of law which makes it obligatory on the part of a State to obtain such permission when it proposes to construct buildings on its land within the Municipality.

The maxim "Roy n'est lie per ascum Statute, si il ne soit expressment nosme," whose meaning is that the king is not bound by any Statute, if he be not expressly named therein to be so bound, refers to a general privilege enjoyed by the Crown and is in no way dependent upon the local or imperial character of the law, and takes effect in all cases when the Crown is not named in the Statute or in all cases where the enactments do not take away the privilege either in express terms or by necessary implication.

2. Even in the absence of statutory provisions, Crown property has been held exempt from taxation where such property was used as stables for the Regiment of the Horse Guards or whether a building was used for the County Police Station, etc etc. Although there was some difference of opinion at one stage as to whether this principle of law which was recognised in England was applicable to our country, there is now no longer any doubt about it and it is indisputable that the law in India is today the same as in England on this matter. The exemption of the properties of the Union and the States from the incidence of taxation under the laws of the States and the Union respectively is now provided by Articles 285 and 289 of our Constitution

3 There are many decided cases both in India and elsewhere on this question which have laid down the above principle. But these cases mainly dealt with the provisions of a taxing Statute or Enactments with penal clauses adjected, as for example, certain provisions of the Motor Car Act and so on But in a case decided by the Privy Council in A.I R.1947 P.C.34 (Province of Bombay vs City Corporation of Bombay and another) on the question whether sections 265 and 222 of the City of Bombay Municipal Act could be enforced against the Bombay Government, their Lordships of the Privy Council held that the Government of Bombay was not bound by the provisions of that Act for the reason that the Crown was not expressly named in that Act which did not also be necessary implication bind it This principle has been followed in England in IX A.C.61, 1904 (2) K.B.164, 1902(2) K.B.73, 1912 (1) K.B.690 and 1940 (1) K.B.427.

In one of the above cases, namely, in 1904 (2) K B.164 the report of another case has been printed at the foot-note of page 165. In that case it was held that a bye-law made under the Public Health Act of 1875 and clearly designed to safeguard the health of the public did not bind the Crown and gave the local board no control over one of His Majesty's prisons. In the main case, the report of which commences at page 164, it was held that the provisions of the Locomotives Act of 1865 regulating the speed of locomotives did not apply to the Military Department of the Crown. A close examination of these decisions reveals that the principle underlying the maxim that the Crown is not bound by a Statute unless expressly named therein, rests on the fact that the property of the Crown is always used for a public purpose and maintained for purposes of State administration or for purposes of Government which were according to the theory of the Constitution -- administered by the sovereign That being the principle underlying the maxim, the question is whether it applies to the properties of the States and the Union, having regard to their present constitutional structure. Having regard to the non-existence of the Crown in our country today and the divergence of judicial opinion and plitical thought on the question

is no doubt not free from difficulty. But whatever may be answer to this question in other circumstances, and in relation to other Statutues and Enactments, it seems to me that in so far as the applicability of Section 112 of the Town Municipalities Act to the properties of our State is concerned, the answer has to be that the maxim applies.

4. This conclusion which I have reached after giving the matter my most anxious consideration appears to me to be the correct view for more reasons than one. Under the scheme of the Town Municipalities Act, it is clear that the State is a controlling authority under the Town Municipalities Act, and it is clear that the State is a controlling authority under the Town Municipalities Act as can be seen from the provisions of Chapters XII and XIII of the Act. Then again, in regard to the particular matter relating to the regulation of structures and buildings and construction or use of buildings, it is the State that has the power to make bye-laws under section 48 clauses (q) and (r) of the Act It would lead to curious results, if the State which has such control and power, is obliged to obtain persmission from a body which is subordinate to it, in regard to a matter over which it has itself a power to make necessary bye-laws. If the word 'person' in section 112 of the Act, whatever may be the meaning of that word in other contexts, canbe interpreted so as to include the State, then it may lead to the result that even a Municipality, for constructing a building required for its own use would have to obtain the persmission contemplated by section 112 of the Act. This would be the odd consequence of such an interpretation.

5. Further, the State is created by the Constitution and functions under it. And the executive powers of the State which are vested in it under the Constitution, require for its exercise the construction of all such buildings as may be necessary for the performance of its executive functions. Indeed, under Article 282 of the Constitution the State may make any grant for any public purpose notwithstanding, that the purpose is not one with respect to which the legislature of the State may make laws. The construction of a building which is necessary for the due performance of the executive functions of the State under the Constitution must be regarded as a right conferred by the Constitution which cannot be curtailed or controlled by a law like the Town Municipalities Act. In a similar case reported in I.L.R.34 Bombay 252, it was held that the G I P Railway Company which possessed statutory powers under the Indian Railway Act to do all acts necessary for making, maintaining, altering, repairing and using the Railway was not bound to obtain a license under the City of Bombay Municipal Act, before using their land for storing timber, although the Act prohibited such use without a license.

I am therefore of opinion that the stand taken by the President of the Tarikere Town Municipal Council is unsupportable."

(Sd) A R Somanath Iyer,
Advocate-General
29-10-51.

LNS.10 22/10.